

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

Crl.MC.No. 392 of 2007()

CP.58/2006 OF THE JFCM COURT, KOTHAMANGALAM.

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PETITIONER: PETITIONER/2ND ACCUSED

REJI, AGED 35, S/O. NARAYANAN, MAYKKAL
HOUSE, NERIYAMANGALAM VILLAGE, KOTHAMANGALAM TALUK.

BY ADV. SRI. PEEYUS A. KOTTAM

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY EXCISE
CIRCLE INSPECTOR KOTHAMANGALAM, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. JIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 392 OF 2007

Dated this the 19th day of February, 2007

JUDGMENT

The petitioner is the 2nd accused and he faces indictment in a prosecution under Secs.55 and 8 of the Kerala Abkari Act.

2. No recovery has been effected from the possession of the petitioner. The 1st accused was allegedly found to be in possession of 2 litres of illicit arrack and it is contended that he gave a statement implicating the petitioner herein. The learned counsel asserts that there is no other circumstance pointing to the alleged complicity of the petitioner. Final report has already been filed. Cognizance has been taken by the learned Magistrate. The petitioner was never arrested. Now he has come to know that a warrant of arrest is pending against the petitioner. Investigation is complete. There is absolutely no necessity to keep the petitioner in custody. The petitioner, in these circumstances, has come to this Court with a prayer that proceedings initiated against him may be quashed.

3. Why is the petitioner not appearing before the learned Magistrate and arguing for discharge before the appropriate court? The learned counsel for the petitioner submits that the petitioner has no objection in resorting to that course; but submits that the learned Magistrate may unnecessarily remand him in custody for the simple reason that he had not appeared earlier before the Investigator or the learned Magistrate and that in view of Sec.41A of the Abkari Act, the petitioner is not entitled for grant of bail.

4. I have heard the learned Public Prosecutor. The learned Public Prosecutor does not raise any objection against issue of directions under Sec.438 of the Cr.P.C. in favour of the petitioner in the peculiar facts and circumstances of this case leaving it open to the petitioner to raise appropriate contentions before the appropriate court under Sec.227/228 of the Cr.P.C. to claim discharge.

5. I am satisfied that the request of the learned counsel for the petitioner can be accepted and directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioner invoking the powers under Sec.482 of the Cr.P.C. Such course, I am

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satisfied, shall advance the interests of justice ideally in the facts and circumstances of this case.

6. In the result, this Crl.M.C. is dismissed; but with a direction under Sec.438 of the Cr.P.C. that if the petitioner surrenders before the learned Magistrate after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate shall enlarge him on bail on condition that he executes a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate. He shall comply with the directions, if any, issued by the learned Magistrate regarding his liability to make himself available for interrogation before the Investigating Officer. The petitioner shall surrender before the learned Magistrate within a period of 15 days from this date failing which these directions under Sec.438 of the Cr.P.C. shall lapse.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. To Judge